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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20541

In the Matter of )  
 )  
Closed Captioning and Video ) MM Docket No. 95-176  
Description of Video Programming )

COMMENTS OF THE WEATHER CHANNEL

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February 25, 1998

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**COMMENTS OF THE WEATHER CHANNEL**

The Weather Channel respectfully files its comments in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

In the FNPRM, the Commission asks whether the deaf and hearing impaired are receiving sufficient amounts of emergency information and, if not, whether such information should be captioned immediately because of health and safety concerns. In considering these questions, the Commission should take into account the fact that, unlike local broadcasters, national services, such as The Weather Channel, program to a broad audience, most of which is not endangered by any particular weather event covered by the service.

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1 Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176, *Further Notice of Proposed Rule Making* (rel. Jan. 14, 1998) ("FNPRM").

As a result, the "emergency information" subject to any new captioning requirement should be safety-related information having an immediate and direct relation to the preservation of life or property. Safety-related information would include such things as the location of storm shelters and the identification of roads having dangerous driving conditions. This definition would ensure that essential lifesaving information is made available to the deaf and hearing impaired. At the same time, it would permit national services to provide non-safety-related coverage of severe weather events without having to incur the expense of captioning such information immediately.

Any more broad definition of emergency information would impose unique and substantial burdens on The Weather Channel. As the only national service devoted to 24-hour live and unscripted coverage of weather phenomena, The Weather Channel makes numerous, daily references to the thousands of severe weather events occurring each year. Such references, however, are confined to coverage of the weather phenomena and not to the provision of critical life-preserving information such as road closings, etc. Were The Weather Channel required to caption all references to severe weather events, it would have to hire immediately real-time captioners on a 24-hour basis and would have lost entirely the ability to transition to full-time captioning which is given to all other services. No other service -- local or national -- would suffer this kind of extreme burden.

Moreover, The Weather Channel's viewers already receive text-only reproductions of all emergency weather bulletins released by the National Weather Service. In fact, The Weather Channel issues more than 100,000 of these text-only emergency weather warnings, watches, advisories, and severe weather statements each year.

In light of the above, The Weather Channel urges the Commission to ensure that any captioning requirements adopted in this proceeding do not force national services to caption non-safety-related references to severe weather events.

## **II. DESCRIPTION OF THE WEATHER CHANNEL SERVICE.**

### **A. Programming.**

The Weather Channel is the only national programming service devoted to 24-hour coverage of weather phenomena. It provides various segments each hour on local and national weather phenomena, including national forecasts, weekend outlooks, and business travel (airport delays, etc.).<sup>2</sup> Virtually all of The Weather Channel's reports -- other than its text- and graphics-only local reports and emergency bulletins -- are presented live and unscripted.

Local weather information (temperature highs and lows, humidity, etc.) is presented every ten minutes "on the eights," i.e., (:08, :18, :28, :38, etc.). It is displayed

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<sup>2</sup> A description of The Weather Channel's programming for a typical hour is contained in Appendix A.

in a full-screen, text- and graphics-only format with no audio voice-overs. The local weather information is supplied through an automatic download from The Weather Channel's computerized Weather Stars (see Part II.B, infra). The local weather typically contains current weather conditions followed by a short forecast of the temperature highs and lows and general conditions such as rain, sunny, cloudy, etc. The Weather Channel's local segments do not include emergency safety information, such as shelter locations, school closings, etc. Examples of The Weather Channel's local weather coverage are contained in Appendix B.

Except for introductions, all of The Weather Channel's national and international weather reports -- both in-studio and in the field -- are live and unscripted. During its national segments, The Weather Channel covers many of the severe weather events that are occurring across the country. The volume of these events on a routine basis is quite large. The Weather Channel issues over 100,000 weather warnings, severe weather statements, and winter advisories each year, which averages 274 per day. Coverage of any single weather event, therefore, is limited typically to no more than several minutes.

#### **B. Emergency Weather Bulletins.**

In addition to its coverage of weather phenomena, The Weather Channel also provides its viewers with text-only reproductions of all emergency weather bulletins released by

the National Weather Service. Such bulletins contain no audio voice-overs.<sup>3</sup>

The Weather Channel provides the bulk of its weather information and emergency bulletins through its fully-automated Weather Star computer system. The Weather Star system consists of more than 7,000 automated, graphic workstations located at cable system headends throughout the United States. The Weather Channel's Star system automatically downloads local, emergency weather bulletins from the National Weather Service and displays the bulletins to the relevant counties in a full-screen text-only format within seconds of their release.<sup>4</sup> To do so, the Weather Stars automatically override The Weather Channel's regular programming for the affected areas; viewers outside such areas do not receive the bulletins. After the full-screen bulletin is presented, the information is repeated continuously at the bottom of the screen for the period of the warning.<sup>5</sup> Because each Weather Star functions only at the cable headend, there may be many different warnings broadcast to separate parts of the country at any one time.

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3 Examples of emergency weather bulletins are contained in Appendix C.

4 Some of The Weather Channel's Weather Stars are not programmed for full-screen bulletins for severe thunderstorms, tornadoes, and flash floods. These Weather Stars provide only a bottom screen crawling bulletin (a crawl) for the period of the warning.

5 If, for example, a tornado warning is issued for a one-hour period, the warnings will run at the bottom of the screen for that hour.

For example, if during a national segment, the National Weather Service issues a tornado warning for Montgomery County, Maryland, the Weather Star located in Montgomery County will replace the on-screen images of the national program with either a full-screen or bottom screen, text-only copy of the National Weather Service's release. Programming for viewers outside of Montgomery County is not interrupted.

**III. THE WEATHER CHANNEL DOES NOT PROVIDE THE KIND OF CRITICAL HEALTH AND SAFETY INFORMATION THAT IS NECESSARY TO BE CLOSED CAPTIONED IMMEDIATELY; SUCH ESSENTIAL INFORMATION IS PROVIDED BY LOCAL BROADCASTERS.**

Local broadcasters are the primary conduits through which their communities receive the critical health and safety information required to plan for and survive emergency weather events. To that end, local broadcasters provide: (1) specific details on hazardous weather events including such crucial information as the event's specific location and probable movements within the community; (2) on-going bulletins alerting viewers to shelter locations, school closings, icy or slick roadways, etc.; (3) phone numbers for affected viewers to call for emergency medical or other assistance; and (4) continuous coverage of the event as it unfolds. Such information enables viewers to take whatever actions are necessary to survive the weather event.



The Weather Channel's live reports provide neither specific localized nor lifesaving information. That is because (1) its audience is national and thus largely unaffected by any single weather event and (2) The Weather Channel is unfamiliar with any given community's shelter locations, highways, school systems, etc. For that reason, The Weather Channel's live coverage does not focus on the emergency or safety-related aspects of a particular weather phenomenon. Instead, The Weather Channel provides non-essential, supplemental information such as a synopsis of what has occurred, what is occurring, and a forecast for what may occur. None of this information contains the kind of specificity which would be of immediate assistance to those in the affected areas.

For example, while The Weather Channel may report generally that a tornado is forming in Cleveland, Ohio, its live coverage will not contain the kinds of information that would assist Cleveland viewers in taking protective actions, including the specific areas threatened by the tornado (other than in the most general terms), shelter locations, school closings, or specific dangerous roadways. Nor does The Weather Channel provide viewers with phone numbers to call for aid or assistance of any kind. Such critical health and safety information is provided only by local broadcasters.

That local broadcasters are the primary means of providing lifesaving information to their communities is

further demonstrated by the fact that they devote far more resources to any particular emergency weather event in their area than does The Weather Channel. Local broadcasters, because of their role in their communities, the potential danger faced by their local populace, viewer expectations,<sup>6</sup> and competitive concerns,<sup>7</sup> expend tremendous resources to cover fully all local weather emergencies. It is not at all uncommon for local broadcasters to preempt all other programming, call in their on-air talent for double or triple shifts, and dispatch reporters to all affected areas throughout the duration of an entire severe weather event.

The Weather Channel cannot devote such resources to all emergency weather events taking place throughout the country. Nor can it match the comprehensive coverage of the event provided by local broadcasters. The Weather Channel lacks sufficient resources to have meteorologists in all communities to cover local weather emergencies and, in any event, such singular coverage clashes with The Weather Channel's very mission: to provide weather information to viewers throughout the entire country, the vast majority of which are not endangered by any particular weather

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<sup>6</sup> Viewers expect to receive emergency information from their local broadcasters. Viewers do not expect to receive localized, lifesaving information from The Weather Channel.

<sup>7</sup> Should a local broadcaster choose not to cover a local weather emergency, its ratings would surely decline as viewers would be attracted to those stations covering the event.

emergency. Thus, while a tornado in Reston, Virginia, is of extreme interest to Reston's inhabitants, such events typically merit no more than several minutes of The Weather Channel's live reports because viewers in the rest of the country are more concerned with their own weather forecast, even if such coverage is of the mundane "it will rain tomorrow" variety.

**IV. A REQUIREMENT TO IMMEDIATELY CAPTION ALL EMERGENCY WEATHER INFORMATION WOULD BE UNIQUELY AND EXTREMELY BURDENSOME TO THE WEATHER CHANNEL.**

Imposition of a captioning requirement would affect The Weather Channel far more onerously than any other programming service, local or national. Specifically, it would eliminate the captioning transition rules for The Weather Channel because it would require The Weather Channel to immediately hire real-time captioners 24-hours-a-day. A captioning requirement for emergency programming would have a far less onerous effect upon local broadcasters and other national services.

At the local level, weather emergencies occur infrequently and are typically seasonal in nature. Thus, local broadcasters could satisfy a captioning requirement by "calling in" real-time captioners on those few occasions when a weather emergency is occurring. The number of weather emergencies covered by The Weather Channel in its live reports dwarfs that for local broadcasters. As noted, The Weather Channel issues over 100,000 weather warnings

annually. Since The Weather Channel spends a few minutes of its live coverage on many of these severe weather events each hour, it would not be able to resort to the intermittent captioning available to local broadcasters. Instead, a captioning requirement effectively would eliminate the transition rules for The Weather Channel and require captioning of its service 24-hours-a-day, using real-time captioners.

As the Commission is aware, less costly means of captioning, such as electronic newsroom captioning ("ENR"), are available only where the programming is already scripted.<sup>8</sup> ENR therefore could be utilized by local broadcasters. ENR cannot, however, be employed by The Weather Channel since all of its live programming is unscripted. Consequently, The Weather Channel would be required to utilize real-time captioners as only they are able to caption live, unscripted programming.

Nor are there other methods by which The Weather Channel can ensure that its live coverage of severe weather phenomena reaches those few viewers in affected areas. For example, the FNPRM notes that local broadcasters may use slides and other techniques to provide emergency weather information to their viewing audience, all of which might be

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<sup>8</sup>

See Closed Captioning and Video Description of Video Programming, Notice of Proposed Rule Making, 12 FCC Rcd 1044, ¶ 21 (1997).

affected by the emergency.<sup>9</sup> Such options make little sense for The Weather Channel's national audience. If, for example, The Weather Channel used an emergency slide to alert viewers to a tornado in Akron, Ohio, the slide would be meaningless to 99% of The Weather Channel's audience which is outside of Akron.

Finally, The Weather Channel already provides its viewers with a text-only display of emergency weather information. As discussed, The Weather Channel has a unique relationship with the National Weather Service. All weather emergencies issued by the National Weather Service and its local offices nation-wide are displayed automatically and immediately, in a text-only format, via the Weather Stars to the relevant viewing audience. This computerized, fully-automated process ensures that viewers in the local area receive emergency information. For example, if the National Weather Service issues a storm warning for Montgomery County, Maryland, the Weather Channel's programming is immediately preempted for Montgomery County viewers and replaced by the text-only message from the National Weather Service. Thus, The Weather Channel already provides the hearing impaired with a very substantial amount of local emergency weather information.

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<sup>9</sup> See FNPRM at ¶ 14.

**V. ANY CLOSED CAPTIONING REQUIREMENT ADOPTED IN THIS PROCEEDING SHOULD NOT BE IMPOSED ON NATIONAL SERVICES SUCH AS THE WEATHER CHANNEL.**

For the reasons stated above, The Weather Channel believes the Commission should exempt national weather services from any requirement to immediately caption their reports on weather phenomenon. Below, The Weather Channel provides several options by which the Commission could achieve this result.

**A. The Commission Should Exempt National Services From Any Emergency Captioning Requirement.**

The Weather Channel demonstrated above that national services differ materially from local broadcasters, especially with respect to the kind of coverage afforded to severe weather events. Specifically, national services provide information that deals with weather as a phenomena and not as an emergency.

Emergency coverage is not provided by national services because severe weather events are localized and the health and safety aspects of such emergencies are covered fully by local broadcasters. This is demonstrated by the fact that the National Weather Service issues its warnings on a county-by-county basis.<sup>10</sup> Furthermore, the local nature of a severe weather event means that the vast majority of a national service's audience is not endangered by any

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<sup>10</sup> Interview with Jim Travers, D.C. Office, National Weather Service (Feb. 17, 1998).

particular weather event. Given the above, it should not be surprising that essential lifesaving information is not found in the coverage of national services, including The Weather Channel. Thus, national services should be exempted from having to caption immediately their coverage of severe weather events and instead be permitted to caption such reports pursuant to the Commission's pre-existing transition rules.<sup>11</sup>

As an alternative to the above proposal, the Commission should consider exempting those national services which offer to broadcast all National Weather Service warnings, watches, and advisories in a text-only format to the appropriate localities. Such a rule would ensure that emergency information reaches viewers without imposing substantial captioning burdens on The Weather Channel's coverage of severe weather events.<sup>12</sup>

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<sup>11</sup> It is not unusual for different regulatory burdens to be imposed on local and national services. For example, the Commission imposes public inspection rules requiring that broadcast stations maintain records pertaining to ownership, employment, program logs, and children's programming in a publicly available file. See 47 C.F.R. § § 73.3526 & 73.3527. No such rule exists for national services. See also Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, 8 FCC Rcd 8565, ¶ 78 (1993) (exempting local and regional programming services from the cable channel occupancy rules).

<sup>12</sup> The FNPRM solicits comment on means other than closed captioning by which emergency information can be provided to the deaf and hearing impaired. See FNPRM at ¶ 14. Textual display of the National Weather Service's warning, watches, etc. is one such means for

**B. The Commission Should Consider Adoption Of A Principal Audience Test.**

Notwithstanding how "emergency information" is defined, the burden of captioning such information should fall on those broadcasters whose primary audience is endangered by the severe weather event. This rule would have the effect of exempting national services from most emergency events except for those extremely rare occasions in which an emergency threatens the entire country. More localized weather events such as a tornado would not be captioned by national services as most of their viewers are safely outside the weather event and therefore in no danger.

**C. The Commission Should Define "Emergency Information" To Include Only Safety-Related Information Having An Immediate And Direct Relation To The Preservation Of Life Or Property.**

The FNPRM tentatively concludes that "emergency information" should be defined to include "situations that affect the safety of viewers" such as "state, local and regional emergency announcements or reports including interruptions of regularly-scheduled programming and late-breaking reports during live news programs" pertaining to "tornadoes, hurricanes, floods, tidal waves, earthquakes, . . . school closings and changes in school bus schedules resulting from such conditions."<sup>13</sup> That definition -- given

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critical weather information to reach the deaf and hearing impaired.

13 See FNPRM at ¶¶ 3 & 8.



broad interpretation -- could be extremely burdensome as it might require captioning of any reference to a severe weather event, regardless of whether the reference was related to health and safety.

The Weather Channel urges the Commission to clarify that "emergency information" means safety-related information having an immediate and direct relation to the preservation of life or property. Safety-related information would include, for example, the location of storm shelters, the identification of roads having dangerous driving conditions, changes to mass transit or school transportation schedules, and information about medical relief. In short, safety-related information is information that informs a viewer how to take immediate steps to protect his or her life or property.

Safety-related information does not include coverage of a weather event that does not give the viewer specific information necessary to the preservation of life or property. For example, the mere reference to a tornado, or its generalized location, would not be safety-related information. While such information may be of interest, the Commission has previously acknowledged that "[t]here are many worthwhile communications that will not qualify as emergency communications."<sup>14</sup> And, of course, such non-

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14 See Amendment of Section 95.41(d) of the Commission's Rules, 22 FCC.2d 635, 636-37, ¶ 6 (1970) ("Rule 95.41 Amendment Order").

safety-related information ultimately will be captioned pursuant to the transition rules established in the Commission's Closed Captioning Order.

The clarification sought by The Weather Channel accords with both the Commission's and other government agencies definition of the term "emergency." In the Closed Captioning Order, the Commission stated that an "[e]mergency matter" includes "information regarding severe weather conditions . . . . that must be [made] available to people immediately and [which] often affect[s] [their] safety and well-being."<sup>15</sup> A similar definition has been used to define "emergencies" with respect to various radio services. In the Citizens Band Radio frequency, for example, the Commission has said that "an emergency communication must have some immediate and direct relation to the safety of life or protection of property"<sup>16</sup> and that "[i]f no immediate action is required, it is not an emergency."<sup>17</sup>

Congress has defined "emergency" in like terms. In the Disaster Relief Act, Congress provided that:

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15 Closed Captioning and Video Description of Video Programming, FCC 97-279, MM Docket No. 95-176, *Report and Order*, at ¶ 252 (rel. Aug. 22, 1997) ("Closed Captioning Order").

16 See Rule 95.41 Amendment Order, 22 FCC.2d at 636-37, ¶ 6. This definition is utilized by the Commission to define "emergency" in other contexts. See, e.g., 47 C.F.R. §§ 1.1204(a)(3), 2.102(i), 5.153, 11.55(a) & 21.211.

17 See Section 95.41 Amendment Order, 22 FCC 2d at 636-37 & attached Appendix to that Order.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety.<sup>18</sup>

Similarly, the Federal Emergency Management Agency ("FEMA") will not assist victims of natural catastrophes unless there is a Presidential determination that "damage of sufficient severity and magnitude" has been caused by unforeseen weather conditions.<sup>19</sup>

Thus, an emergency communication typically refers to safety-related information having an immediate and direct relation to the preservation of life or property.<sup>20</sup> The definition of "emergency information" should not encompass non-safety related coverage of severe weather events because such coverage does not contain the kinds of "pertinent details" which require captioning.<sup>21</sup> The above definition

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18 See 42 U.S.C. § 5122(1).

19 See 44 C.F.R. § 206.2(17).

20 Much like a court may define the terms in a statute by examining industry practice, see, City of Dallas v. FCC, 118 F.3d 393, 395 (5th Cir. 1997), the Commission should define "emergency communication" in accordance with its usual meaning which, as shown, is information having an immediate and direct relation to the preservation of life or protection of property.

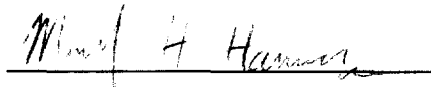
21 The FNPRM states that the Commission is concerned that "all pertinent details" of "an emergency information program" be made available to the deaf and hearing impaired. See FNPRM at ¶ 15. Non-safety programming -- even of a severe weather event -- does not contain such details. Moreover, to the extent that such information is non-emergency information, it is covered by the existing captioning rules.

of "emergency information" would be far less burdensome and yet would ensure that critical health and safety information reaches the deaf and hearing impaired.

**VI. CONCLUSION.**

For the reasons stated above, the Commission should adopt closed captioning rules for emergency events which do not require national services, such as The Weather Channel, to caption immediately their coverage of weather phenomena.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael H. Hammer", is written over a horizontal line.

**THE WEATHER CHANNEL**

Michael H. Hammer  
Michael F. Finn

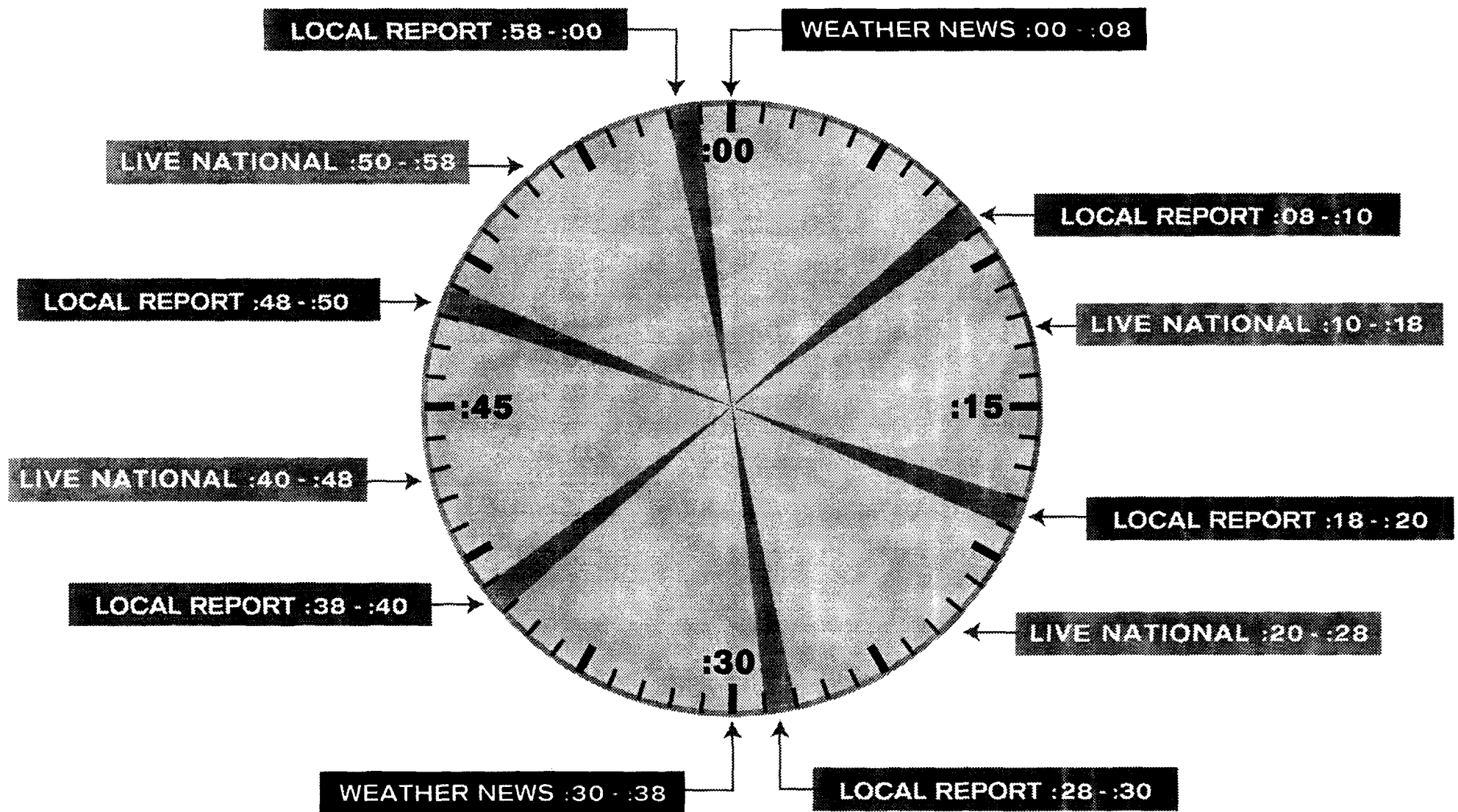
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Its Attorneys

February 25, 1998

# **APPENDIX A**

# The Weather Channel Program Clock



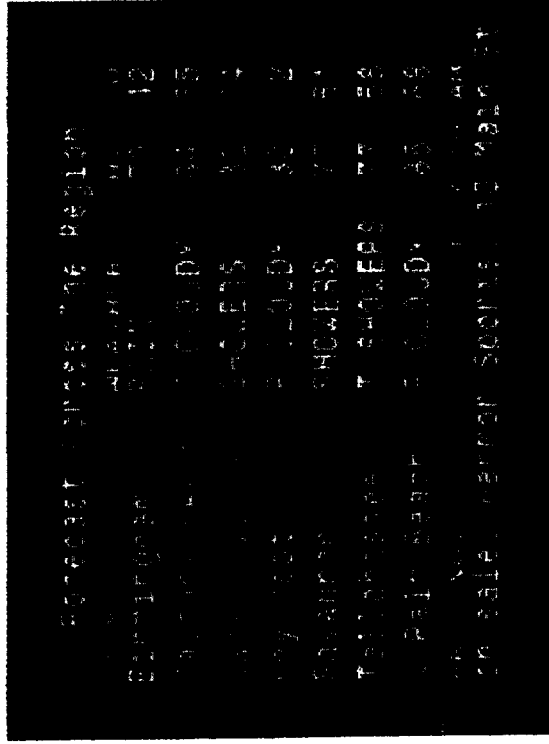
- WEATHER NEWS: Live programming, which includes taped video of severe weather from across the country
- LOCAL REPORT: text & graphic, Weather Star generated
- LIVE NATIONAL: Live weather programming from across the country

\*\*\* commercial spots are not shown in this clock

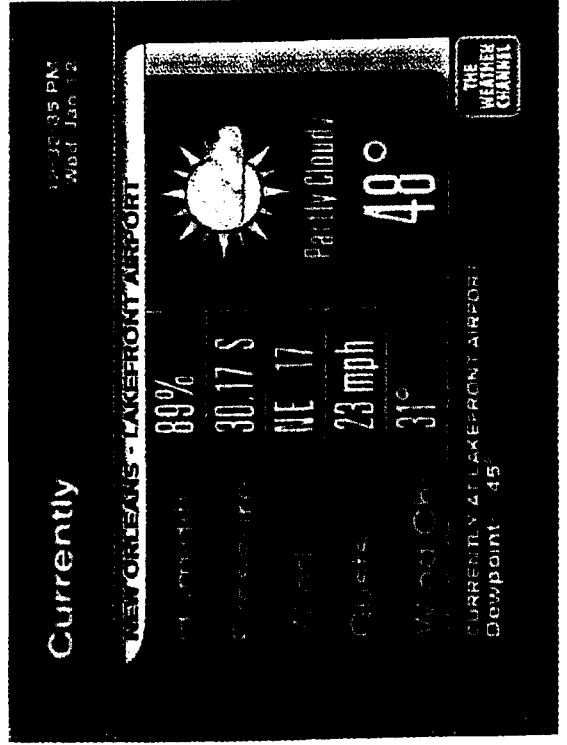
## **APPENDIX B**

# The Weather Star<sup>®</sup> Evolution

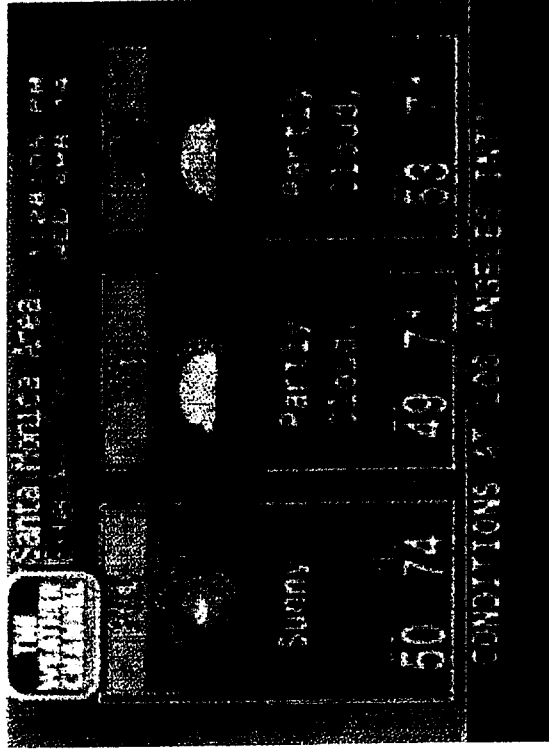
# Weather Star III



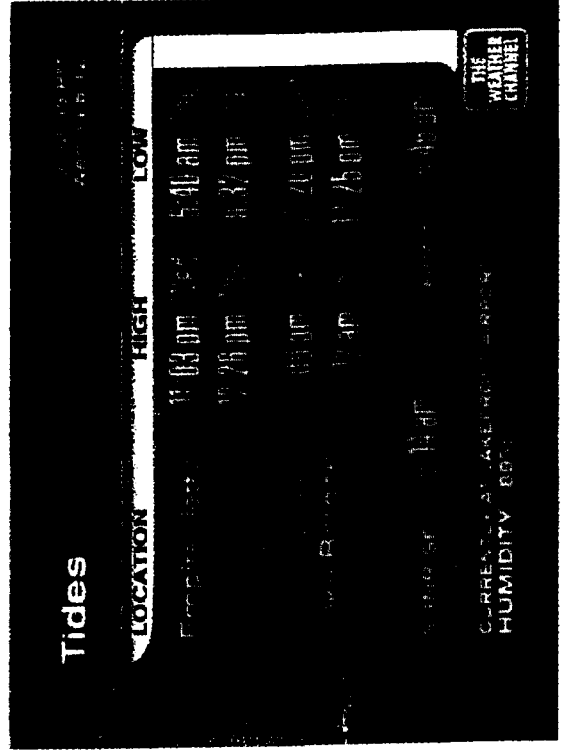
# Weather Star XL



# Weather Star 4000



# Weather Star XL





## **APPENDIX C**